Office-Supreme Court, U.S.
FILED
AUG 24 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2188

IN THE

Supreme Court of the United States

October Term 1980

FRIARTON ESTATES CORP., *et al.*,

Petitioners,

vs.

THE CITY OF NEW YORK, *et al.*,

Respondents.

On Writ of Certiorari to the Court of Appeals of the State of New York

---

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

RICHARD AYRES GIVENS
BOTEIN, HAYS, SKLAR & HERZBERG
200 Park Avenue
New York, New York 10166
(212) 867-5500
Counsel of Record for Petitioners

ROGER F. BLOOM
GINA SCHACHTER
BOTEIN, HAYS, SKLAR & HERZBERG
Of Counsel for Petitioners

TABLE OF CONTENTS

	PAGE
Summary	1
Point I—Contrary to Corporation Counsel's Claim, The Facts Clearly Show a Substantial Constitutional Question and Indeed Violation	2
A. The Prior As Well as Present Owners of the Properties Being Confiscated Are Parties	2
B. The City's "Self-Assessment Offer" Seeking to Moot the Owners' Constitutional Right to a Trial Was a Sham	3
C. The Owners' Numerous Efforts to Obtain a Trial on the Merits Were Denied	4
D. Water and Sewer Taxes Were Never Relied Upon by the State Courts and Were Substantially Disputed	6
E. New York City Tax Commission Action Was Never Intended to Be, and Is Not, a Substitute for Judicial Relief	7
F. Settlements as to Some Parcels by Some Owners for Some Years Are Irrelevant	8
Point II—The Cases in this Court Cited by the City Do Not Support Its Contention That Its Procedures Can Leave a Taxpayer Remediless	10
Conclusion	10

TABLE OF CONTENTS OF APPENDIX

PAGE

Documents Sumitted to State Supreme Court, from Record Before Appellate Division:

Affidavit of Edward A. Friedman, 11/20/78 ..... 1 ra

Affirmation of Edward A. Friedman, 10/16/78 1 ra

Affirmation of Martin R. Fine, 11/15/79 ..... 2 ra

Affirmation of Martin R. Fine and attachments, 10/16/79 ..... 5 ra

Language Deleted by the City from Stipulation as to Certain Parcels, Filed in State Supreme Court, 11/9/79 ..... 8 ra

Comparison of Assessed Values and Fair Market Value Based on Actual Purchase Prices on Parcels Purchased at City Auctions Based on Record Below, Submitted to Appellate Division ..... 8 ra

TABLE OF AUTHORITIES

PAGE

Cases:

Colt Industries v. Tax Comm'n, 439 N.Y.S.2d 24 (N.Y.Sup.Ct., App. Div., 1st Dept. 1981) 6

Freewalt Realty Corp. v. Finance Adm'n, N.Y.L.J. 12/5/80 (Sup.Ct.N.Y.Co.) 5, 7

Gardner v. Broderick, 392 U.S. 273 (1968) 3, 6

Hagar v. Reclamation District, 111 U.S. 701 (1884) 9

Matter of 749 Broadway Realty Corp. v. Boyland, 1 Misc.2d 575 (Sup. Ct. N.Y.Co. 1955), *aff'd* 1 A.D.2d 819 (1st Dept. 1956), *aff'd*, 3 N.Y.2d 737 (1957) 7

Nelson v. City of New York, 352 U.S. 103 (1956) 6

Phillips v. Commissioner, 382 U.S. 589 (1931) 9

Rosewell v. LaSalle National Bank, 49 U.S.L. Week 4285 (1981) 10

Utley v. St. Petersburg, 292 U.S. 106 (1934) 9

United States Constitution:

Fourteenth Amendment, §1 ..... *passim*

Statutes:

Federal:

28 U.S.C. §1257(3) 10

28 U.S.C. §1341 10

State:

New York City Charter §166 7

Rules:

Rules of the Supreme Court of the United States:

Rule 22.6 6

Rule 28.1 2

No. 80-2188

IN THE

Supreme Court of the United States

October Term 1980

FRIARTON ESTATES CORP., *et al.*,
Petitioners,

vs.

THE CITY OF NEW YORK, *et al.*,
Respondents.

On Writ of Certiorari to the Court of Appeals of the State of New York

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Summary

In its brief in opposition to the Petition for Certiorari, counsel for the respondent City of New York, appears to seek to convince this Court that the facts in this case are so complex, disputed and obscure that no substantial constitutional question can be discerned amid the multitudious assertions of the parties. The contrary is the case.

The underlying facts are not subject to serious dispute, and clearly show a substantial constitutional question, and indeed, it is submitted, a clear violation of the Fourteenth Amendment's protection against taking of property without due process and in violation of equal protection.

The City has not even attempted to refute the uncontradicted showing in the Petition that the tax assessments were grossly inflated and unequal, that the properties are sustaining losses due to City mandates, and that all trials where inequality is claimed are now stayed. It is uncontroverted that the properties suffered large operating losses because of the nominal rents (e.g. $49.87, R 516)* permitted, artificially high assessments and legally required services.

POINT I

Contrary to Corporation Counsel's Claim, The Facts Clearly Show a Substantial Constitutional Question and Indeed Violation.

A. The Prior As Well As Present Owners of the Properties Being Confiscated Are Parties.

Corporation Counsel argue that petitioners Friarton Estates Corp. and Brontel, Ltd. purchased the properties involved subject to tax deficiencies and hence cannot be heard to complain (RB i, 29). This ignores the undisputed fact that the former owners of each parcel who stand to lose mortgage rights if the properties are confiscated, were also made parties both here and below (Pet. 5); petitioners collectively represent ownership of the properties since 1973. The City's argument amounts to seeking to split the interests of petitioners and then urging that the claims of some alone are insufficient.

---

* References to the Record before the Appellate Division of the Supreme Court of the State of New York are in the form "R ——," to Respondents' Brief Opposing Petition for a Writ of Certiorari in the form "RB ——," to the Petition for a Writ of Certiorari in the form "Pet. ——," to the Appendix to the Petition in the form "——a," and to the Appendix to this Reply in the form "——ra." For the statement as to parties under Rule 28.1, see Pet. II.

B. The City's "Self-Assessment Offer" Seeking To Moot the Owners Constitutional Right To a Trial Was a Sham.

Corporation Counsel also asserts that the owners unreasonably refused offers to pay the taxes assessed on an installment basis or even to pay what would be due based on their own valuations of the properties "pending judicial review and 'correction' thereof" (RB ii, see RB 3-5, 14-15). This ignores the crucial undisputed facts that:

1. The City's self-serving "offer" included requirements, not quoted in its brief (RB 14-15) that (a) the owners' pending motions for relief in the courts be withdrawn, (b) any default even by one minute or for a one penny error would permit "the City's entry of summary judgment *ex parte*" confiscating the properties and (c) "this arrangement . . . will not be introduced in any way at the [tax] certiorari trial" (29a). The fact that some owners accepted these unfair terms and minimal reductions on some parcels for some years under duress hardly means that the Fourteenth Amendment permits these owners to be required to accept such dictated terms to avoid confiscation. Compare *Gardner* v. *Broderick,* 392 U.S. 273 (1968) (required waiver of Fifth Amendment invalid).

2. The properties suffered substantial negative cash flows due to the City's rent restrictions and mandated services (Pet. 6-7). Hence only infusions of outside funds could permit the payment of any taxes at all (see 2, 5 ra). Yet any investor or prospective mortgagee would obviously need to know the ultimate tax lien on the property in order to make an investment or mortgage loan. But a ruling on the merits of the taxes due was made impossible by the City's successful opposition to the owners' repeated efforts to obtain a trial on the merits (discussed in Point I(C) below and outlined at Pet. 7-8). The "offer" was

not accompanied by any guarantee of a trial on the merits in the foreseeable future (29a).*

C. The Owners' Numerous Efforts to Obtain a Trial on the Merits Were Denied.

Corporation Counsel seeks to cast the blame for lack of a trial on the merits of the assessments on the owners (RB 4, 12-18, 30-44), but never denies the City's continuous and successful opposition to such trials since 1977 and indeed earlier (Pet. 7-8).

The City's tactic was initially successful before the State Supreme Court because that court erroneously found that notes of issue were not filed by the owners in the tax certiorari cases (22a, RB 12-18, 30-44). Actually, such notes of issue had in fact been filed in June and July of 1979, after the owners had to fulfill burdensome procedural preconditions chiefly productive of delay (3-5 ra), and were brought to the attention of the State Supreme Court long before judgments were entered (3-7 ra). On appeal to the Appellate Division and the State Court of Appeals, the City abandoned any contention that these notes of issue had not in fact been filed. The City's erroneous contention, it is submitted, should not have been resurrected in this Court.

Numerous further efforts by the owners to obtain an immediate trial on the merits of their claims proved uni-

---

* Corporation Counsel also argues that the owners could have avoided confiscation by a "token" initial payment of 15% of the inflated amounts claimed for numerous prior years with the balance payable in installments (RB 12, 14-15). This ignores the facts that (1) no trial on the merits was ever provided or assured by the City, (2) the owners would have to pay the full greatly inflated assessments and (3) the owners would be totally unable to obtain financing while the huge challenged tax liens remained on the properties.

formly unsuccessful because of the City's determined opposition to any trial on the merits (see 1-7 ra; Pet. 7-9).*

Corporation Counsel's reference to petitions dating from 1963/4 having been "stricken from the calendar for failure to prosecute" (RB 10) omits the fact that this action involving prior owners (see 3 ra) occurred in 1970 (R 248) and could not possibly affect the years involved in this case.

Corporation Counsel's statement that the City "insisted that the [tax] certiorari proceedings be calendared, so that a final determination of assessments can be made" (RB 15) is a quotation from a conclusory statement by the City itself (R 508-510) with no factual support, flatly contradicted by the physical deletion by the City of a proposed clause requiring that the City not oppose a preference for trial (8 ra). Trials have also been denied since 1973 with respect to refunds claimed on taxes paid (R 198, 215).

Corporation Counsel claims that petitioners seek to to rely on evidence outside the record (RB 2, 5), but ignores the fact that the only extra-record item cited as to the merits is a subsequent published State Court decision, *Freewalt Realty Corp.* v. *Finance Administrator,* N.Y.L.J. (Sup. Ct. N.Y.Co.), Dec. 5, 1980, p. 6, set forth at 27a, which confirmed the City's successful blockage since 1975 of tax certiorari trials where inequality of assessment was claimed.

As is undisputed, the City obtained an *ex parte* blanket stay of all cases in which inequality of assessments were claimed (Pet. 9). Corporation Counsel's effort to explain this amazing event (RB 42n) ignores the fact that the stay blocked completely trials of cases involving any in-

* Corporation Counsel (RB 31n) also seemingly seeks to confuse settlement conferences before the City Tax Commission as to some years as to some parcels, with those required as a precondition to trials on the merits of tax certiorari cases. It is undisputed here that the City delayed the latter as a means of avoiding trials on the merits of the assessments (3-4 ra).

equality claims, so that no trial even on overvaluation could be had unless the owners waived their inequality claims. Cf. *Gardner* v. *Broderick, supra.**

D. Water and Sewer Taxes Were Never Relied Upon by the State Courts And Were Substantially Disputed.

Corporation Counsel asks this Court to bypass the constitutional issues raised by the Petition on the ground that default in payment of claimed water and sewer charges alone would justify foreclosure (RB iii, 34). The State Courts never relied upon or even mentioned any such ground (20a-26a). Moreover, many of the parcels involved had been vacant for a long period during which there was no water or sewer usage (R 475, 479).**

---

* The City's explanation that a test case, *Colt Industries* v. *Tax Comm'n*, 439 N.Y.S.2d (App. Div. 1st Dept. 1981) should be completed first is out of place since *Colt* involves a Park Avenue office building, raising issues hardly similar factually or legally to those concerning the rent-controlled and vacant properties, involved here. Meanwhile the City seeks to confiscate petitioners' properties for failure to pay taxes on which review proceedings have not only been blocked for years, but are now hermetically sealed at the City's request.

The City's suggestion that its separate obstruction of efforts to compare assessments is derived from the secrecy of tax returns (R 46n) is also contradicted by published data showing that the information is on public record and merely overwhelmingly difficult and expensive to collect (37a-40a).

Furthermore, Rule 22.6 of the rules of this Court specifically provides that even after briefing is completed, subsequent decisions of relevance may be called to the attention of the Court.

The other non-record material made part of the Appendix to the Petition (28a, item 2, 30a-43a) was cited not on the merits but rather to indicate that the question presented by the Petition is of substantial public importance (Pet. 15-16). That contention is only marginally questioned by Corporation Counsel (RB 46), based on irrelevant prejorative categorizations of the petitioners without record support (RB 44).

** *Nelson* v. *City of New York*, 352 U.S. 103 (1956), cited by Corporation Counsel in support of its contention (RB iii, 34) dealt with a situation where the water and sewer charges were undisputed.

(footnote continued on next page)

E. New York City Tax Commission Action Was Never Intended To be, and Is Not a Substitute for Judicial Relief.

Corporation Counsel contends in this Court that the judgments below should be sustained on the ground, never mentioned by the State Court (20a-26a) that administrative City Tax Commission proceedings constitute adequate due process to support confiscation of petitioners' property (RB 37-38). State law, however, does not regard the Tax Commission as the place to obtain a definitive ruling on tax matters, but expressly provides for judicial adjudication. New York City Charter § 166, RB 27; see *Matter of 749 Broadway Realty Corp.* v. *Boyland*, 1 Misc.2d 575 (Sup. Ct. N.Y. Co. 1955), *aff'd*, 1 A.D.2d 819 (1st Dept. 1956), *aff'd*, 3 N.Y.2d 737 (1957). Moreover, it was undisputed below that Tax Commission proceedings are not actual adjudications but rather settlement discussions, and that the City has created a "rule" that waivers of rights as to all but the two current years are mandatory to obtain any relief at this intermediate procedural stage (2-3 ra).

Thus, neither the State Courts, state law nor the facts afford any support to Corporation Counsel's effort to sidestep the clear implications of the City's successful asphixiation of the owners' only real State remedy, the tax certiorari proceedings. See *Freewalt Realty Corp.* v. *Finance Administrator, supra* (27a; see also 28a).

In addition, of course, the large continuing losses incurred by the properties due to the City's restrictions, combined with the inability to obtain a ruling on the total tax due, made financing to pay these taxes unavailable. And payment of water and sewer charges alone would of course not have stopped foreclosure in any event. No procedure existed which would have accomplished that result. Undoubtedly it was for this reason that the State Courts chose to deal with the substance of the matter and not to seek to foreclose petitioners' rights on such a technicality.

F. Settlements as to Some Parcels by Some Owners for Some Years Are Irrelevant.

Corporation Counsel claims (RB 29) that petitioners' assertion that the assessments are in large multiples of fair market value (Pet. 5, citing R 353, 478-79, 531, 533) is "flatly belied by petitioners' acceptance of a 22% reduction in assessed values" on certain parcels for two years. The low fair market values in concededly arm's-length transactions necessarily flowed from long-sustained undisputed operating losses on the properties (Pet. 6), documented in the record (R 181-191, R 353, 478-79, 531, 533). It is not disputed that the reasons for the low prices paid (e.g., 8 ra) were the large continuing losses caused by the token rents mandated by the City, combined with expanding mandated services, and the artificially high assessments in issue; which it has not denied were based on valuations in high multiples of sale prices (Pet. 6-7). The validity of the rent controls which contributed to these losses is not in issue here as Corporation Counsel seeks to imply (RB 35), but merely the fact of such controls, leading to such losses and the denial of a trial on the effect of all of the City's actions on the actual value of the properties.

The City's assessed valuations even on those parcels purchased directly from the City without tax arrears after former owners had such properties confiscated, were as high as 1500% of fair market value (8 ra).

Settlements favorable to the City as to some parcels as to some years merely reflected the City's strong bargaining position based on its successful opposition to trials on the merits of assessments. This should hardly affect the owners' rights to contest on other years or other parcels. Corporation Counsel has cited no case even remotely suggesting that settlements as to some items in dispute are relevant to issues were not settled.

Furthermore, there were no settlements for any years as to the most significant parcels, especially the largest Block, No. 735, Lot 30 (R 477-78).

POINT II

The Cases in this Court Cited by the City Do Not Support Its Contention That Its Procedures Can Leave a Taxpayer Remediless.

Corporation Counsel seems to assert that summary tax collection procedures can be sustained even if no reasonably prompt adjudication of the merits is available. This astounding proposition is contrary to the core principles of due process and is unsupported by the cases in this Court cited by Corporation Counsel (RB 36-39).*

None of these cases involved a situation such as that here where a remedy on the merits was deliberately blocked or deferred "indefinitely" (27a).

For example, in *Phillips* v. *Commissioner*, 283 U.S. 589, 596-97 (1931), cited by Corporation Counsel (RB 39), this Court said:

> "Where only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate."**

---

* Corporation Counsel also implies that petitioners are somehow foreclosed because counterclaims are banned in tax foreclosure cases (RB 11), ignoring the fact that petitioners' claims were also raised as defenses (R 449-50) which the State Court thought might have merit but were "mooted" (22a, 26a).

** In *Hagar* v. *Reclamation District*, 111 U.S. 701, 711-12 (1884), also cited by Corporation Counsel (RB 37), this Court said that where the taxpayer may "set forth, by way of defense, all his grievances" in a judicial hearing, numerous prior decisions "are all satisfied where a hearing in court is thus allowed."

In *Utley* v. *St. Petersburg*, 292 U.S. 106, 109 (1934), cited at RB 37, this Court held that:

> "There is no constitutional privilege to be heard in opposition at the launching of a project that may end in an assessment. It is enough that a hearing is permitted before the imposition of the assessment as a charge upon the land [citations omitted]."

The Tax Injunction Act, 28 U.S.C. § 1341, paradoxically relied upon by Corporation Counsel in opposition to the Petition for a Writ of Certiorari (RB 43), reflects long-standing recognition that due process is offended where taxes are enforced but no "plain, speedy and efficient" remedy is available in the State Courts. If, as seems clear from *Rosewell* v. *LaSalle National Bank*, 49 U.S.L. Week 4285 (1981), delaying such a remedy "indefinitely" (27a) would justify federal equity intervention, *a fortiori* it is a basis for petitioners' effort to invoke this Court's jurisdiction under 28 U.S.C. § 1257(3).

Petitioners do not claim as Corporation Counsel implies (RB 38) that commencement of an assessement review proproceeding automatically stays tax enforcement, but only that adjudication must be available at some foreseeable point. Seven years of delays deliberately caused by the City with no end in sight (Pet. 8, R 448) would seem enough.

The public importance of the questions presented are hardly disputed. Taxes not based on realities of cash flow in rent-restricted housing, combined with indefinite denial of trials on such claims, not only destroy neighborhoods (31a) but deprive the buildings of the funds needed for essential services for the residents (2, 5 ra).

Conclusion

The petition for a writ for certiorari to the Court of Appeals of the State of New York should be granted.

Respectfully submitted,

Richard Ayres Givens
Botein, Hays, Sklar & Herzberg
200 Park Avenue
New York, New York 10166
(212) 867-5500
Counsel of Record for Petitioners

APPENDIX

Affidavit of Edward A. Friedman, 11/20/78, Submitted to State Supreme Court (R 269-70)

11. * * * [The City] sets forth allegations that the City's Real Estate Tax Division has a tremendous backlog of certiorari cases on its calendar in all the City's Boroughs, and particularly in New York County. As a result of the City's delay, unless this Court grants [the owners'] motion for consolidation and/or an immediate trial of said cases, the [owners] will not have [their] day in Court until after some time in 1980 when any relief the Court may then grant would be moot.

Affirmation of Edward A. Friedman, 10/16/78, Submitted to State Supreme Court (R 129-30)

12. The defendant [owner] herein was finally able to file an "eight-month notice" on July 13, 1978 . . . This eight-month notice gives the City an opportunity to examine the income and expense statements submitted along with said notice and to have a settlement conference with the defendant herein (who is the petitioner in the certiorari proceedings). But upon information and belief, the City of New York has not made an offer in the past several years to any petitioner in any court proceeding based on an eight-month notice.

13. Upon the expiration of said eight months and/or if this Court orders otherwise, or if the City were to agree to waive the eight month requirement, the defendant herein is prepared to serve and file a note of issue on all the pending

proceedings. In fact, the defendant herein is prepared to go to trial in said proceedings at any date agreeable to the City of New York. It is respectfully submitted to this Court that no offer of an early trial in said proceedings will be forthcoming from the City and in fact, it is submitted that the City will resist any effort to bring these cases to an early resolution.

Affirmation of Martin R. Fine, 11/15/79, Submitted to State Supreme Court (R 608-11)

25. In February of 1979, there was absolutely no money to pay real estate taxes because the actual operating cost of the properties was in a deficit position and the respondents owed staggering sums of money to fuel oil dealers which, if not paid, would result in a cutoff of oil deliveries, which would lead not only to an immediate physical destruction of the properties, but would subject respondents to criminal prosecution under the City's same strangulating web of laws, rules and regulations.

* * *

27. In Paragraph 9 of the City's affirmation in opposition, dated November 9, 1979, certain citations are made for the purpose of making this Court believe that any true and meaningful tax commission hearings have been held by the City which vaguely offered respondents "due process" with respect thereto. . . . the so-called "tax reduction hearings" are cursory thirty-second reviews of the files at which time no meaningful relief is ever offered by the City.

28. Furthermore, the City has adopted another obstructive rule pursuant to which the City will only settle two

years cases at a time and would require the respondents to waive all its rights to prior years in order to get even a slight reduction in the two most current years.

29. The City of New York would have this Court believe that it was respondents that deliberately delayed filing of the notes of issue herein (which have been filed, and the cases are now presently ready for trial). The facts are quite the opposite. Firstly, because the properties were forced into mortgage foreclosure proceedings by virtue of their inability to pay their operating expenses because of the City's confiscatory rent control laws and confiscatory real estate taxes, the previous owners "walked away" from the properties and management thereof was taken over by a receiver for the mortagees. As a result, the financial records of the properties were a shambles and difficult to put together; the City's rules and regulations required verified financial statements to be submitted to the City prior to filing the note of issue. The respondents herein (with respect to Block 735, Lot 30 and Block 1042, Lots, 2, 3, 4, 5, 6, 7 and 64) only acquired title to the property in July of 1977, and immediately began the awesome task of putting together all the necessary financial records required by the City prior to placing the tax certiorari cases on the calendar.

30. Furthermore, the then rules of the New York State Supreme Court, Section 660.18(c)2(ii) required the respondents to file a so-called "eight month" (request for hearing) notice prior to filing a note of issue, allegedly for the purpose of giving the City the opportunity to settle these cases during such eight month period, prior to permitting respondents to actually file a note of issue. In fact, in July, 1978 and August 1978, as soon as such records were

available, the respondents caused to be filed such "eight month notices" (requests for hearing). . . . Despite the fact that such eight month notices were filed, the City for years and years—and this is a fact of which the Court can take judicial notice and which the City cannot deny—failed and refused to hold *any* eight month notice hearings and simply stalled and stalled the tax certiorari calendars for their own confiscatory and devious purposes. It ill lies in the mouth of the City to claim that respondents have delayed herein. In fact, the opposite is true.

31. Promptly after the required eight month period had passed (the City still refusing to hold a settlement hearing in flagrant violation of the aforesaid rules of the Appellate Division, 660.18(c)), the respondents filed the notes of issue, as annexed as Exhibits A and B to the Fine affirmation [set forth at 7-8 ra below].

32. Since the notes of issue herein have long ago been filed and the cases are presently ready for trial, and no judgment has been entered in Action No. 30 (by the City's own admission) and the Court properly granted a consolidation of Action No. 29 and Action No. 30 with respect to the captioned parcels, and the City admits that no judgment of foreclosure will be entered in action No. 30 until at least March of 1980, there does not appear to be any reason why this Court should not grant, at least, respondents' motion herein for a trial preference in these consolidated actions, so that the tax certiorari trial with respect to these parcels can immediately proceed. The City of New York will incur no prejudice thereby.

33. The respondents herein have, since acquiring title to the premises in 1977, attempted, through a vast infusion of funds, effort and labor, to rehabilitate the occupied parcels herein involved; tens and tens of thousands of dollars have been spent by respondents for repairs and renovations of the occupied parcels, to wit, Block 735, Lot 30 (which consists of approximately 12 tenanted buildings) and Block 1042, Lots, 2, 3, 4, 5, 6, 7 and 64 (which consist of approximately 8 tenanted buildings).

Affirmation of Martin R. Fine, 10/16/79, Submitted to State Supreme Court and Attachments (R 539-541)

[T]his Court should grant the relief of consolidation of the In Rem tax foreclosure proceedings and the tax certiorari proceedings requested in the original cross-motions herein, and grant such other and further relief as the Court may deem just and equitable including, but not limited, to granting trial preferences to these parcels in the pending tax certiorari proceedings . . .

Exhibit A—Note of Issue for Block 735 Lot 30 Annexed to Foregoing Affirmation

NEW YORK COUNTY CALENDAR CLERK'S OFFICE

GENERAL EQUITY CALENDAR

Calendar No. 40515

MID-CENTRAL PROP.

vs

TAX COMM., Block 735 Lot 30

[STAMPED AS FILED]
Jul 3, 1979
Calendar No. 40515

• • •

NATURE OF ACTION OR SPECIAL PROCEEDING
Tax certiorari

Exhibit B—Note of Issue for Block 1042, Lots 2-7, 64 Annexed to Foregoing Affirmation

MID-CENTRAL PROPERTIES

vs

DEPT OF FINANCE & TAX COMM.

[STAMPED AS FILED]
Jun 26, 1979
Calendar No. 40505

• • •

NATURE OF ACTION OR SPECIAL PROCEEDING
Tax certiorari

[Block 1042, Lots 2, 3, 4, 5, 6, 7, 64]

Language Deleted by the City from Stipulation as to Certain Parcels Filed in State Supreme Court 11/9/1979 (R 591)

Upon completion of such audit, the City will attempt in good faith to negotiate a settlement of the tax certiorari proceedings with defendants. If such settlement is not reached by May 15, 1979, defendants will move for a preference for their pending actions, which will not be opposed by the City.

Comparison of Assessed Values and Fair Market Value based on Actual Purchase Prices on Parcels Purchased at City Auctions Based on Record Below Submitted to Appellate Division (R 181-191)

Block/Lot	*Fair Market Value Based on Actual Purchase Price*	*Assessed Value*	*Assessed Value as Percentage of Fair Market Value (Nearest 100%)*
1621/65	$1,000 (1976)	$15,000	1500% (15 times)
1599/49	$ 900 (1976)	$11,500	1200% (12 times)
440/51	$2,500 (1975)	$22,000	900% (9 times)